

**GENERAL TERMINAL HANDLING CONDITIONS**

**Samskip Van Dieren Multimodal B.V., hereinafter referred to as "SAMSKIP".**

Applicable to loading/discharging, carriage and intermediate storage services provided by Samskip Van Dieren Multimodal B.V. - Rail Terminal Hohenbudberg.

**1. Scope of application, conditions additionally applicable**

1.1 SAMSKIP renders its loading, carriage discharging and intermediate storage services in relation to Intermodal Transportation (IT) exclusively pursuant to these General Terminal Handling Conditions (GTC). These GTC apply also on any future business relationship even in the event the applicability of these GTC is not once again stipulated explicitly.

1.2 General terms and conditions of the Customer are not applicable unless and until SAMSKIP has accepted the application thereof explicitly in writing.

1.3 The following regulations apply additionally:

- The Code of Conduct for Intermodal Terminals (*Regeln für den Betrieb von Umschlagbahnhöfen (Betriebsregeln)*).

- The Dangerous Goods Guideline on Intermodal Transportation (*Gefahrgutleitfaden Kombiniertes Verkehr*).

1.4 Furthermore, the codes of conduct and safety rules posted by SAMSKIP at the terminal area apply. The Customer shall ensure that these will be adhered to by the Customer, personnel of the Customer, as well as by any subcontractor (and/or its personnel) of the Customer and by delivery agents.

**2. Scope of services**

2.1 SAMSKIP operates an intermodal terminal as connection point between transportation by road and by rail.

2.2 In addition to the loading, discharging, carriage and intermediate storage services, SAMSKIP provides other services related to IT if contracted with the Customer. In the event such additional services are contracted with the Customer, these GTC apply to these additional services as well.

**3. Request for service and acceptance**

3.1 Any individual order of the Customer in respect of loading, discharging, carriage and intermediate storage services shall be made in writing, by fax, by e-mail or by electronic transfer and shall contain all relevant data for the proper performance of the ordered services. If Customer orders without respecting this form, SAMSKIP may nevertheless accept the order.

3.2 The acceptance of an order by SAMSKIP can either be made in writing, fax or e-mail (e.g. by an order confirmation) or implicitly by SAMSKIP providing the services ordered by the Customer.

**4. Condition of loading units, liability of the Customer**

4.1 All loading units provided by the Customer shall always be in full compliance with laws and regulations, shall always comply with technical standards applicable and must at all times be fit in every respect for safe intermodal transportation and handling at IT. By handing over a loading unit to SAMSKIP the Customer assures that the respective loading units fulfil the aforementioned requirements and that the goods stored therein as well as the way the goods are stored in the loading unit fulfil all requirements for safe handling in IT. In particular, the condition of the loading units, the marking of the loading units and the condition of the goods must allow safe loading, discharging, carriage and intermediate storage and the packing, stowing and lashing of the goods must be adjusted to the specific requirements of IT, in particular in the event of shipping of liquids or goods with specific temperature requirements.

4.2 The marking of any loading unit for its clear identification must be in full compliance with ISO 6346 (BIC-Code). Swap bodies and trailers fit for crane lifting, that are not identified by means of ISO 6346, shall at all times carry code signs on their sides that are in accordance with DIN EN 284. The full registration number shown on the code signs will be used to identify such loading unit. Deviating from the aforementioned identification principles requires a separate agreement between SAMSKIP and the Customer.

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4.3 The Customer shall be liable in accordance with the statutory provisions for any damages sustained by SAMSKIP or any third party.

4.4 Loading units within the meaning of these GTC are:

- Containers (according to ISO)
- Swap bodies (according to DIN CEN)
- Trailers ("Sattelanhänger") (according to StVZO)

4.5 Any loading units that are used for unaccompanied IT within the meaning of these GTC, shall have admittance for IT.

4.6 When issuing an order, the Customer shall take into account that the weight and dimensions of the loading units have to be in line with the respective technical requirements of SAMSKIP's handling facilities.

4.7 The Customer shall ensure that the road haulier acting for or under the instructions of the Customer prepares the truck for loading or unloading in a proper way and fastens and secures or unfastens and unsecures any loading unit properly onto or from the truck/trailer and carries out all handling pertaining thereto to ensure safe loading/discharge of the loading unit onto or from the truck/trailer and safe carriage of the loading unit by truck/trailer, including any and all adjustment to any side support of the truck/trailer and installing or uninstalling safety devices onto the truck/trailer to avoid objects getting underneath truck/trailer. The Customer shall be fully responsible vis-à-vis SAMSKIP in respect of the aforementioned obligations. SAMSKIP's obligation to ensure safe loading as provided for in sec. 412 German Commercial Code remains unaffected.

4.8 The Customer shall ensure that the railway company (acting for or under the instructions of the Customer) prepares the rail vehicle for loading or discharging of a loading unit in a proper way and fastens and secures or unfastens and unsecures any loading unit properly onto or from the rail vehicle and carries out all handling pertaining thereto to ensure safe loading/discharge of the loading unit onto or from the rail vehicle and safe carriage of the loading unit by rail. The Customer shall be fully responsible vis-à-vis SAMSKIP in respect of the aforementioned obligations. SAMSKIP's obligation to ensure safe loading as provided for in sec. 412 German Commercial Code remains unaffected.

4.9 SAMSKIP can only inspect the loading units in order to identify obvious defects by global visual inspection when the loading unit is handed over to SAMSKIP. SAMSKIP shall be under no obligation to inspect the cargo, the packing, the stowage or the lashing and securing of same or to inspect any information or documents provided in that respect by the Customer. Likewise, there is no obligation to carry out any verification in respect of or relating to customs documentation accompanying the loading units.

## 5. Terminal Handlings

5.1 A terminal handling commences at the moment the handling equipment of the terminal is lowered to move a loading unit.

5.2 A terminal handling ends when the handling equipment is detached and lifted from the loading unit.

5.3 A terminal handling may be one of the following moves:

5.3.1. Roadside inbound: Lifting of a loading unit from the truck/trailer and positioning of the loading unit onto a rail vehicle or onto a container stack or onto a trailer;

5.3.2. Railside inbound: Lifting of a loading unit from the rail vehicle onto a trailer, onto a container stack or onto another rail vehicle;

5.3.3. Roadside outbound: Lifting of a loading unit from a rail vehicle or from a Container stack onto a trailer;

5.3.4. Railside outbound: lifting of a loading unit from a trailer, from a container stack or from another rail vehicle onto a rail vehicle.

## 6. Intermediate Storage

6.1 SAMSKIP will arrange for intermediate storage of loading units (empty or loaded) if local capacity does allow so, in the event such intermediate storage is required in the course of the terminal operations prior to or following rail transportation (or rail replacing road transportation) of the loading unit. However, SAMSKIP shall not be obliged to arrange such intermediate storage.

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6.2 Allocation of storage capacity to allow intermediate storage shall be the sole discretion of the management of the terminal.

6.3 Intermediate storage commences upon placing of the loading unit at the designated stack and shall end upon picking up such loading unit for loading onto a road or rail vehicle for onward transportation.

6.4 Parking of trailers or swap bodies on legs, whether on the roadside before terminal handling or railyard after terminal handling is only allowed with the explicit consent of SAMSKIP.

6.5 In the event of intermediate storage of a loading unit the Customer shall be obliged to pay to SAMSKIP a storage fee in accordance with the applicable tariffs, which depends on the period of the relevant intermediate storage.

6.6 In the event SAMSKIP has reasons to believe that the value of the goods stored is less than the debts of the Customer in relation to the goods, SAMSKIP is entitled to demand from the Customer to put up adequate security in due time, or, alternatively, to store the goods elsewhere. If the Customer does not meet such demand, SAMSKIP is entitled to immediately terminate the contract in relation to such goods.

## **7. Taking over of loading units, transfer of risk**

7.1 Each loading unit shall be deemed to have been taken over by SAMSKIP at the time when the loading unit has been provided to SAMSKIP and SAMSKIP has taken possession of the respective loading unit.

7.2 Each loading unit shall be deemed delivered and handed over by SAMSKIP at the time when SAMSKIP has given the consignee the opportunity to take possession of the loading unit.

## **8. Liability**

8.1 SAMSKIP shall be liable for damage to goods in accordance with the statutory provisions, unless agreed otherwise in the following.

**8.2 SAMSKIP's liability for damage to or loss of goods shall be limited to two (2) special drawing rights (SDR) per kilogram of the damaged or lost goods.**

8.3 SAMSKIP's liability for damages due to delay in delivery shall be limited to three times the amount of the handling fee, however not exceeding a maximum amount of EUR 125,000 per event of damage.

8.4 In the event of damage to a railway vehicle, the assessment of damages and the compensation of same shall be done on the basis of the General Contract of Use (GCU) of the UIC. Sections 413 (2), 418 (6), 422 (3), 431 (3), 433, 445 (3), 446 (2) HGB shall remain unaffected.

8.5 SAMSKIP's liability for all other damages than damage to or loss of the goods or damages due to delay in delivery shall be limited to three times the amount that would have to be compensated in the event of loss of the goods, however not exceeding a maximum amount of EUR 125,000 per event of damage.

8.6 In the event a loading unit contains valuable goods (i.a. alcoholic drinks, electronic games, communication equipment, computers or similar, computer parts or tobacco products), the Customer shall timely notify SAMSKIP in this respect. If the Customer fails to timely inform SAMSKIP accordingly, any and all liability of SAMSKIP shall be excluded.

8.7 The aforementioned limitations of liability shall apply in accordance with sections. 434 and 436 HGB also in the event a claim is made in tort.

8.8 The aforementioned limitations and exclusions of liability do not apply in the event of damage to life, limb or health or if the damage was caused by wilful intent or gross negligence of SAMSKIP or its vicarious agents.

## **9. Notification of damage and time bars**

9.1 Any notice of damage has to be made in text form (e.g. by electronic mail or by fax).

9.2 The Customer is obliged to assert the loss of or damage to the goods, in accordance with sec. 438 HGB (German Commercial Code) when the goods are delivered. In case of externally recognisable losses upon delivery of the goods, the Customer is obliged to make a notification of damage to SAMSKIP at moment of delivery of the goods.

In case of damages, not discoverable from their outward condition, a notification of damage may be made against SAMSKIP, in accordance with sec. 438 HGB (German Commercial Code), not later than one week (7 days) after the moment of delivery of the goods.

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9.3 The Customer shall at all times be under the duty to allow SAMSKIP, or their appointed technical surveyors, inspection of damage.

9.4 The Customer's claims against SAMSKIP become time-barred in accordance with the statutory provisions (usually within one year from delivery of the goods).

## **10. Additional conditions in relation to handling of dangerous goods and waste**

10.1 When handling and delivering loading units with dangerous goods, SAMSKIP and the Customer shall comply with the relevant dangerous goods regulations in their respective valid version.

10.1 Loading units (whether loaded or empty but not cleaned) containing dangerous goods will not be stored by SAMSKIP. Furthermore, dangerous goods belonging to

- IMDG Class 1 / ADR Class 1 (explosives)
- IMDG Class 7 / ADR Class 7 (radioactive material)
- ADR Class 2 (Gases)
- ADR Class 3 (Flammable liquids)
- ADR Class 5.2 (Organic peroxides)
- ADR Class 6.2 (Infectious substances)

will never be handled or stored by SAMSKIP and no services of whatever kind shall be rendered in relation to such goods.

10.2 Whenever loading units containing dangerous goods are present at a terminal the "Gefahrgutleitfaden Kombiniertes Verkehr" shall apply in addition to rules of law relating to dangerous goods.

10.3 Loading units with dangerous goods shall only be handed over to SAMSKIP on the day of intended transportation.

10.4 Incoming loading units with dangerous goods shall be taken receipt of by the Customer or the party having title to take receipt on the day of arrival at the terminal, but in any case within 24 hours counting from the moment of arrival. If loading units with dangerous goods are not taken receipt of within this deadline, SAMSKIP is at liberty to arrange for returning of the loading unit to the place of origin, or, alternatively, to have such loading unit stored elsewhere at a storage company that has the required authorization to store dangerous goods, or to have the loading unit and/or its contents destroyed or neutralized, at the risk and expense of the Customer.

10.5 In the event a loading unit containing dangerous goods is handed over to SAMSKIP without proper notification or without proper markings to the loading unit revealing its contents, the Customer shall be liable for any and all damage arising thereof, unless the respective damage was solely caused by SAMSKIP's negligence.

10.6 The customer is aware that SAMSKIP holds a permit in accordance with the German Federal Immission Control Act (Bundesimmissionsschutzgesetz - BImSchG) for handling and intermediate storage of loading units with waste materials during transport. The Customer shall ensure that only loading units with waste materials are handled via SAMSKIP for which SAMSKIP has a corresponding permit. The authorised waste goods and the relevant waste code numbers are published on the Samskip website; <http://www.samskipmultimodal.com/samskipvandierenmultimodal/>.

## **11. Insurance**

11.1 SAMSKIP has taken out proper liability insurance, the cover being in accordance with market standards.

11.2 Upon request of the Customer prior to handing over the goods, SAMSKIP can arrange transport insurance of the goods with an insurer of its choice. The basis of the insurance taken out are the particulars of the goods provided by the Customer. In the event particulars provided by the Customer are incomplete, wrong or contradictory, with the result that no or only insufficient insurance cover is arranged for, SAMSKIP shall not be liable for any damages arising therefrom. SAMSKIP shall not be under any obligation to verify whether the particulars provided by the Customer are adequate or correct.

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11.3 In the event of damages covered by insurance taken out by SAMSKIP, which were caused by the Customer's negligence, SAMSKIP shall be entitled to reimbursement of the expenses associated with managing the claim with the underwriters.

## **12. Prices & Payment terms**

12.1 The prices for the services rendered by SAMSKIP are set out in the Price List for Handling Services in the version valid at the time of the booking. However, any individual price agreements between SAMSKIP and the Customer take precedence over the Price List for Handling Services.

12.2 All prices are in Euro and have to be paid in Euro. Furthermore, all prices are net prices and are subject to value added taxes (VAT).

12.3 All Payments have to be made to the bank account(s) designated by SAMSKIP and any costs for arranging payment are for the account of the Customer. Any invoice issued by SAMSKIP is due for payment upon receipt of the invoice by the Customer and has to be paid within 14 days from date of the invoice, unless otherwise agreed in individual agreement between SAMSKIP and the Customer.

12.4 On the event of an invoice becoming overdue, the Customer shall be obliged to compensate interest at a rate of 5 percent in addition to the basic interest rate determined by the European Central Bank. In the event notice of payment is required, the Customer shall pay EUR 15,- to compensate for the extrajudicial debt collecting costs arisen accordingly.

12.5 Compensation or set off of a claim by the Customer against invoices of or counterclaims to SAMSKIP is prohibited. Exercising a right of retention or lien by the Customer is likewise prohibited. The Customer shall only be entitled to exercise a right of set-off or retention where its counterclaims are undisputed or confirmed by a final court decision.

## **13. Retention rights and liens**

13.1 SAMSKIP shall be entitled to secure its claims arising from its services according to the statutory provisions regarding lien and retention rights.

13.2 Lien rights can be exercised according to statutory provisions, provided that the threat of the pledge sale and the required notifications about the exercise of the legitimate lien and the sale of the pledged items shall be forwarded to the consignee, and the time limit of one month as specified in section 1234 BGB is superseded by a time limit of one week.

13.3 The Customer is entitled to prohibit the exercise of the lien by granting an equivalent security for SAMSKIP's claims, such as a directly enforceable bank guarantee.

## **14. Customs**

14.1 Customs clearance for the loading units and their contents, which are under customs supervision and whose handling the Customer has purchased from SAMSKIP, shall be carried out exclusively by the Customer or its client.

14.2 The Customer undertakes to carry out customs clearance reliably and properly for all loading units which are relevant under customs law, in particular to make all declarations and notifications in good time. The associated customs obligations, in particular also the monitoring of the presentation deadlines, shall be incumbent exclusively on the Customer or its client.

14.3 If a claim is asserted against SAMSKIP as operator of the terminal by the customs authorities due to a breach of one of the aforementioned obligations of the Customer or its client or due to a surrender of loading units initiated by the Customer, the Customer shall indemnify SAMSKIP against all payment obligations on the basis of any import duty notice issued on first demand. This shall not apply if the respective claim was caused by SAMSKIP's negligence.

## **15. Jurisdiction & Governing law**

16.1 The Courts of Duisburg, Germany, shall have jurisdiction in respect of any and all claims arising out of or in connection with the contract on services rendered by SAMSKIP. For claims by the Customer against SAMSKIP this jurisdiction is exclusive. For claims by SAMSKIP against Customer it is supplementary.

16.2 These GTC as well as all contracts and services executed thereunder shall be governed by the law of the Federal Republic of Germany.

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**16. General**

16.1 Should any provision of these GTC be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. In place of such invalid provision, an effective provision that comes closest to the parties' intention shall be deemed to have been agreed. The same applies in cases of unintentional regulatory gaps.

16.2 The original of these general conditions is in the English language. In the event of any divergence between a translation in another language and the English version, the English version shall prevail.